EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

86 1285 NO. (1)

Supreme Court, U.S.
FILED
FEB 4 1987
JOSEPH F. SPANIOL, JR.
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

JULIUS JONAS JODELE

v.

COMMISSIONER OF INTERNAL REVENUE

ON
PETITION FOR WRIT OF CERTIORARI
TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF FOR PETITIONER

Julius Jonas Jodele
370 Altair Way, #42
Sunnyvale, CA 94086
(408) 245-1606

PETITIONER PRO SE

31 pp

Questions for Review

I

Can Petitioner's, Jodele's, fifth amendment right to be heard be satisfied by summary proceedings (without opportunity for oral argument) when Jodele is a Lithuanian national American with English as his second language and is a layman who has not had any formal training in law so he does not know how to draft formal briefs like lawyers can?

II

Is not Jodele's right to the courts being restricted by only allowing him to appear by written pleadings only?

III

Is not a judgement to pay attorneys' fees a form of double taxation when the attorneys are already on a salary payed by the people of the United States through taxes?

Table of Contents

Questions for Review	1
Table of Citations	iii
Opinions Below	1
Jurisdiction	2
Questions for Review	3
Statement of the Case and Facts	4
Argument	18
Reason for Granting Writ	18
Conclusion	20
Certificate of Service	22
Appendix	23

Table of Citations

Cases

Anti-Fascist Committee v. McGrath 16
341 U.S. 123 (1951)
Armstrong v. Manzo 15
380 U.S. 545 (1965)
Brescie Const. Co. v. Walard Cost. Co. 12
246 N.Y.S. 862
Crandall v. Nevada 7
6 Wall 35, 46
Doyle v. Mitchell Bros. Co. 8,9
247 U.S. 179
Edward v. Keith 8
231 Fed. Rep. 110
Eisner v. Macomber 8
252 U.S. 189 (1920)
Goldberg v. Kelly 15
397 U.S. 254 (1970)
Haines v. Kerner 12,15,17
404 U.S. 519 (1972)
McCullock v. Maryland 7
4 Wheaton 316
Miranda v. Arizona 18
384 U.S. 436 (1966)
Shaffer v. Carter 8
252 U.S. 37 (1920)
Stratton's Independence v. Howbert 8
231 U.S. 399

Statutes

26 U.S.C. § 61 6
26 U.S.C. § 3401(a) 10
26 U.S.C. § 6051 10
26 U.S.C. § 6211 6,10
26 U.S.C. § 6214 5,10
26 U.S.C. § 6673 5

28 U.S.C. § 1254(1) 2
28 U.S.C. § 2101(c) 2

To the Honorable William H. Rehnquist, Chief Justice, and associate Justices of the Supreme Court of the United States.

Julius Jonas Jodele, Petitioner *Pro Se*, prays that this petition for certiorari is ganted to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in the above entitled case on August 5, 1986 and denial of rehearing *en banc* entered on November 6, 1986

Opinions Below

The *per curiam* affirmed judgment of the United States Court of Appeals for the Ninth Circuit whose judgment is herein sought to be reviewed and is unreported.

The *per curiam* order of the United States Court of Appeals for the Ninth Circuit denying Jodele's motion for rehearing and rejecting the suggestion for rehearing *en banc* is printed in Appendix.

Jurisdiction

The United States Court of Appeals for the Ninth Circuit filed a Memorandum on August 5, 1986. Jodele timely (within 14 days pursuant to Federal Appellate Procedure Rule 40) filed a petition for rehearing en banc on August 19, 1986. Jodele's petition for rehearing was denied and his suggestion for rehearing en banc was rejected by the United States Court of Appeals for the Ninth Circuit's Order filed on November 6, 1986. This petition is timely filed within 90 days of denial of rehearing en banc persuant to Supreme Court Rule 20.2 and 28 U.S.C. § 2101 (c). This Court has jurisdiction pursuant to 28 U.S.C. § 1254 (1) providing for review after rendition of judgment.

Questions for Review

I

Can Petitioner's, Jodele's, fifth amendment right to be heard be satisfied by summary proceedings (without opportunity for oral argument) when Jodele is a Lithuanian national American with English as his second language and is a layman who has not had any formal training in law so he does not know how to draft formal briefs like lawyers can?

II

Is not Jodele's right to the courts being restricted by only allowing him to appear by written pleadings only?

III

Is not a judgement to pay attorneys' fees a form of double taxation when the attorneys are already on a salary payed by the people of the United States through taxes?

Statement of the Case and Facts

Jodele received a notice of deficiency for the tax years 1980, 1981 and 1982 from the Internal Revenue Service dated March 26, 1985. On the face of the notice was stated that "If you want to contest this deficiency in court...., you have 90 days from the above mailing date of this letter to file a petition with the United States Tax Court for a redetermination of the deficiency."

On June 20, 1985, Jodele filed a petition, a request for designation of trial at Los Angeles, CA and a request for a jury trial.

On June 26, 1985, Jodele's request for designation of trial at Los Angeles, CA was granted but never materialized.

On July 2, 1985, Jodele's request for a jury trial was summarily denied.

On Aug 12, 1985, Motion for assessment of damages under I.R.C. § 6673 and Motion to dismiss for failure to state a claim upon which relief can be granted were filed on behalf of the Commissioner along with memorandum in support thereof.

Objections to the Respondent's motions were due on September 2, 1985. September 2, 1985 was a Monday. The first Mondays in Septembers are legal holidays, Labor Days, as was September 2, 1985. The Tax Court was closed that day so Jodele's objections to Respondent's motions were filed on September 3, 1985, the next working day.

On September 3, 1985 Jodele also filed a motion to dismiss for lack of jurisdiction because 26 U.S.C. § 6214 is very specific on the types of determinations the Tax Court can make.

> "[T]he Tax Court shall have jurisdiction to redetermine the correct amount of the deficiency....and to determine whether any additional amount, or addition to the tax should be assessed"

And 26 U.S.C. § 6211 specificaly defines what constitutes a deficiency -

> "[T]he term "deficiency" means the amount by which the tax imposed by subtitle A or B, or chapter 41, 42, 43, 44, or 45".

Subtitle A is Income Taxes and 26 U.S.C. § 61 is in chapter 1 of subtital A which quotes:

> "[G]ross income means all income from whatever source derived, including.... the following items: (1) Compensation for services...."

Emphasis added to the word "from" because the word "by" was not used. Jodele's wage was the compensation for services and no income was derived form the compensation. Had the word "by" been used where "from" is used in § 61, then there would be no

question that the Internal Revenue Code considers the basic compensation as taxable income. But as worded now, the basic wage must be converted into taxable income. This interpretation is consistent with 48 Am Jur 2d § 2 Constitutional protection of right to work.

> "The right to labor and to its protection from unlawful interference is a constitutional as well as a common-law right. Every man has a natural right to the fruits of his own industry.
>
> Labor is deemed to be property, especially within the meaning of constitutional guaranties. Thus, the right to acquire property includes the right to acquire property by labor. The right to earn wages is just as much property and within the protection of the due process clause of the Fourteenth Amendment to the Federal Constitution as earned wages."

But if the government has the power to tax something, then the government has the power to destroy it. As was quoted in **McCullock v. Maryland** and in **Crandall v. Nevada**-"That the power to tax involves the

power to destroy." Then, if the govenment can destroy Jodele's wages, then Jodele couldn't have a right to them; The government would have the right to Jodele's wages and then we would be a communistic country instead of a strong democracy we once had. And consistent with **Edward v. Keith**, 231 Fed Rep 110 were was quoted, "One does not derive income by rendering services and charging for them." This Court said in **Shaffer v. Carter** that what constitutes as taxable income "resolves itself into a mere question of definitions". A question that this Court answered very plainly in **Eisner v. Macomber;**

> "[W]e find little to add to the succinct definition adopted in two casses arising under the Corporation Tax Act of 1909 (**Stratton's Independence v. Howbert**, 231 U.S. 399, 415; **Doyle v. Mitchell' Bros. Co.**, 247 U.S. 179, 185)-"Income may be defined as the gain derived from capital, from labor, or from both combined," provided it be understood to include profit gained through a sale or conversion of capital assets, to which it was applied in

the **Doyle Case** (pp. 183, 185).

> ....The Government, although basing its argument upon the definition as quoted, placed chief emphasis upon the word "gain," which was extended to include a variety of meanings; while the significance of the next three words was either overlooked or misconceived. "**Derived-from-capital**";-"the **gain-derived-from-capital**," etc. Here we have the essential matter: **not** a gain **accruing to** capital, not a **growth** or **increment** of value **in** the investment; but a gain, a profit, something of exchangeable value **proceeding from** the property, **severed from** the capital however invested or employed, and **coming in**, being "**derived**," that is, **received** or **drawn by** the recipient (the taxpayer) for his **separate** use, benefit and disposal;-**that** is income derived from property. Nothing else answers the description."

With this understanding of income, Jodele claims his wages are not. So the question in Tax Court becomes-Has Jodele's wages been converted into taxable income and how? This question the Tax Court has no jurisdiction to answer. The Tax Court can only **redetermine** the deficiency, or tax, on an established income and not an original determination on what is or isn't

income (see 26 U.S.C. § 6214).

Since this case never went to trial, it is assumed that the Commissioner is using a Form W-2 as proof of income. But the Form W-2 has irrelevant information on it for this case. What is on Form W-2 is defined in 26 U.S.C. § 6051;

> **"Receipts for employees**
>
> (a) **Requirement.**-.....a written statement showing the following:
>
> (3) the total amount of **wages**[1] as defined in section 3401(a),"

Since section 3401(a) is in chapter 24 of subtitle C, and the Tax Court can only make determinations in subtitle A or B, or chapter 41, 42, 43, 44 or 45 per 26 U.S.C. § 6211, the Tax Court can not use the information on Form W-2 to determine a deficiency because what is in subtitle C, has

---

1. Emphasis added to the word "wages" because the word "income" was not used. Again affirming Jodele's contention that his wages are not income.

no relevance in subtitals A, B or D of the Internal Revenue Code. The Tax Court does not have the jurisdiction to accept a Form W-2 because all of the information on it is under subtital C!

On September 4, 1986, Jodele filed an objection to the Commissioner's motion for damages. The Commissioner alledged that Jodele's primary purpose for these proceedings was for delay.

On October 4, 1985, the Tax Court:

(1) summarily approved and adopted a memorandum sur order of the Special Trial Judge;

(2) summarily granted respondent's motion to dismiss for failure to state a claim upon which relief can be granted;

(3) summarily denied petitioner's motion to dismiss for lack of jurisdiction;

(4) summarily decided that there are deficiencies in petitioner's Federal income

tax and additions to tax; and

(5) summarily awarded damages to the United States in the amout of $5,000 pursuant to section 6673.

The Tax Court erred in adopting the memorandum sur order because this order has made findings of fact and conclusions of law on a summary proceeding. This is in direct violation of the New York Supreme Court's opinion in **Brescie Const. Co. v. Walard Const. Co.**, 264 N.Y.S.862, 238 App. Div. 360.

The Tax Court erred in granting Commissioner's motion to dismiss a lay pro se's petition for failure to state a claim upon which relief could be granted because this is in direct violation of this Court's opinion in **Haines v. Kerner**, 404 U.S. 519.

The Tax Court erred in summarily denying Jodele's motion to dismiss for lack of ju-

risdiction because the Tax Court only has jurisdiction to redetermine a deficiency and not make an original determination of what constitutes taxable income. Also the Commissioner has no relevant evidence to believe that Jodele had enough taxable income to issue a notice of deficiency which the Tax Court has no jurisdiction to determine either.

The Tax Court erred in summarily finding that there are deficiencies in Jodele's Federal income tax because there was no evidence entered to suggest that Jodele had converted his wage into taxable income. With no income, there can not possibly be a deficiency.

The Tax Court erred in summarily awarding damages to the United States in the amount of $5,000, because Jodele's primary purposes for instigating these proceedings are to resolve these questions and issues

of laws and rights and not primarily for delay. Somehow from a lay pro se's briefs, it was established by summary proceedings that Jodele instituted court proceedings primarily for delay.

The Tax Court erred in summarily dismissing this case without complying with Jodele's right to be heard. Although Jodele was borne in Los Angeles, CA, Jodele was raised by his Lithuanian national parents. Just like a lot of other Americans, English is his second language. Jodele doesn't like to write and therefore does not write well, but from necessity has been improving. By living most of his life in the United States, Jodele has learned the English language and can understand and speak it very well for a layman. By only allowing him to present his cases in writing, effectively denies him his right to be heard. The word used is

"heard" and not "read". By being forced to compete with a staff of trained lawyers in writing only, Jodele mut be able to draft formal briefs just like lawyers do. But this Court said in **Haines v. Kerner**, 404 U.S. 519, that lay pro ses should not be held to the same stringent standards as lawyers are. A limitation of written appearances only so severely handicaps Jodele's effectivity in the courts that it denys Jodele an opportunity for a meaningful hearing in a meaningful manner. This is against this Court's opinion in **Armstrong v. Manzo**. These summary proceedings also denied Jodele an effective opportunity to defend by confronting any adverse witnesses and by presenting his own arguments and evidence orally- against this Court's opinion in **Goldberg v. Kelly**.

> [T]he right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardship of a

criminal conviction, is a principle basic to our society."

This Court made this quote in **Anti-Fascist Committee v. McGrath**. Jodele will suffer a grievous los of almost $50,000 if this Court chooses not to grant Jodele certiorari. This is more wage than Jodele has been able to earn in 1980 and 1981 combined!

This Court has repeatedly and consistently used the word "heard" and not the word "read" to fulfill the Constitutional requirement of due process of law.

On appeal to the United States Court of Appeals for the Ninth Circuit, the Court summarily affirmed the Tax Court's summary judgment and imposed attorneys' fees upon Jodele. The Ninth Circuit baldly stated that, "Thes is no constitutional right to oral argument."

But there is a constitutional right to be heard, not to be read. And in Jodele's case, he was so severely handicapped in written proceedings that his right to be heard can not have been complied with, without an oral presentation.

Jodele pointed out to the Ninth Circuit, in his petition for rehearing en banc, that whatever the Commissioner claimes can not be presumed correct unless a minimal evidenciary foundation is laid showing that Jodele's wages have been converted into income. Just because Jodele was waiting to present his case to the court in Los Angeles, (as has been granted by the Tax Court in Washington) is no reason to impose sanctions against Jodele and summarily dismiss his case for failure to state a claim upon which relief could be granted. See **Haines v. Kerner**, 404 U.S. 519.

Argument

Jodele may not be able to artfully plead his case, but he has very substantial issues of law to settle and is entitled to an opportunity to offer proof. If these proceedings keep getting summarily dismissed, Jodele will be condemned to suffer a grievous loss; not for being proved wrong but for not being as skilled as a lawyer is in drafting formal pleadings.

Reason for Granting Writ

This Court has from time to time took on the task of delineating, in meaningful language, the manner in which the constitutional rights of the individual could be protected. Probaly most recently against overzealous police practices in **Miranda v. Arizona**. Supreme Court Justice William O. Douglas once said that our Bill of Rights curb all three branches of government. It subjects all departments of

government to a rule of law and sets boundaries beyond which no official may go. It emphasizes that in this country man walks with dignity and without fear, that he need not grovel before an all powerful government. But today, the I.R.S. has usurped so much power that it has the lay public groveling at their feet. This Court should delineate similar guidelines for the I.R.S., in conjunction with the Tax Court, the manner in which the constitutional rights of the individual could be protected from the overzealous I.R.S. practices. Jodele understands that the I.R.S. needs power in order to perform its function, but to deprive individuals their rights as a normal course of buisness breeds contempt for the I.R.S. and its laws. The chances of an individual comming in contact with the I.R.S. are much greater than one being confronted by a police officer.

Conclusion

Jodele was denied an effective opportunity to defend by confronting any adverse witnesses and by presenting his own arguments and evidence orally at a meaningful time and in a meaningful manner, and therefore, has been denied his constitutional right to due process of law.

This Court should determine whether imposing attorneys' fees is a form of double taxation when they are imposed on a private citizen and the attorneys are employees of the United States. The attorneys already draw a salary that is payed by the taxpayers, including Jodele.

Wherefore, the petitioner asks this Court that, for all the foregoing reasons, the petition for writ of certiorari be granted.

Respectfully submitted,

Julius Jonas Jodele

State of California
County of Santa Clara

Sworn and subscribed to me this 2nd day of February, 1987, and before me personally appeared Julius Jonas Jodele to me well known and known to me to be the person who executed this document.

Notary Public

OFFICIAL SEAL
TERRANCE R MAHURIN
NOTARY PUBLIC-CALIFORNIA
SANTA CLARA COUNTY
MY COMM. EXP. NOV. 12, 1990

My Commission Expires:

Certificate of Service

It is hereby certified that service of a true and correct copy of this petition has been made on the Attorney for the Appellee by mailing a copy thereof on this 3rd day of February, 1987, in an envelope, with postage prepaid, properly addressed to him as follows:

Department of Justice
Tax Division
P.O.Box 502
Washington, D.C. 20044-4502

Julius Jonas Jodele

State of California
County of Santa Clara

Sworn and subscribed to me this 2nd day of February, 1987, and before me personally appeared Julius Jonas Jodele to me well known and known to me to be the person who executed this document.

Notary Public

OFFICIAL SEAL
TERRANCE R MAHURIN
NOTARY PUBLIC-CALIFORNIA
SANTA CLARA COUNTY
MY COMM. EXP. NOV. 12, 1990

My Commission Expires:

Appendix

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

August 5, 1986

Julius Jonas Jodele, Petitioner-Appellant,	)	
	)	No. 85-7718
v.	)	
	)	MEMORANDUM*
Commissioner of Inrenal Revenue, Respondent-Appellee.	)	

Petition to Review a Decision of the United States Tax Court

Submitted July 23, 1986**

Before: SNEED, ALARCON, and NOONAN, Cicuit Judges.

Per Curiam.

Affirmed.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

November 6, 1986

Julius Jonas Jodele, Petitioner-Appellant,	)	
	)	No. 85-7718
v.	)	
	)	ORDER
Commissioner of Inrenal Revenue, Respondent-Appellee.	)	

Petition to Review a Decision of the United States Tax Court

Submitted July 23, 1986**

Before: SNEED, ALARCON, and NOONAN, Cicuit Judges.

The panel as constituted above has voted to deny the petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc, and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

United States Tax Court
Washington, D.C. 20217

October 4, 1985

Julius Jonas Jodele, Petitioner,	)	
	)	Docket No.
v.	)	
	)	19185-85
Commissioner of Internal Revenue, Respondent.	)	

ORDER OF DISMISSAL AND DECISION

Upon consideration of the record herein, and for reasons appearing in the memorandum sur order of the Special Trial Judge, which is hereto attached and served herewith and which we approve and adopt, it is

ORDERED that respondent's motion to dismiss for failure to state a claim upon which relief can be granted filed on August 12, 1985, is hereby granted. It is further

ORDERED that petitioner's motion to dismiss for lack of jurisdiction, filed on September 3, 1985, is denied. It is further

ORDERED AND DECIDED that there are deficiencies in petitioner's Federal income tax and additions to tax as follows:

		Addition to Tax		
Year	Deficiency	Section 6653a(1)	Section 6653a(2)	Section 6654
1980	$6,458.68	$327.43	--	$397.50
1981	$6,462.00	$323.10	*	$495.15
1982	$8,050.00	$402.50	**	$783.74

* 50% of the interest due on $6,462.00.
** 50% of the interest due on $8,050.00.

and that damages are due from petitioner which are hereby awarded to the United States in the amount of $5,000 pursuant to section 6673, Internal Revenue Code of 1954, as amended.

Samuel B. Sterrett
Chief Judge

Supreme Court, U.S.
FILED
FEB 25 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-1285

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

JULIUS JONAS JODELE

v.

COMMISSIONER OF INTERNAL REVENUE

ON
PETITION FOR WRIT OF CERTIORARI
TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SUPPLEMENTAL APPENDIX

Julius Jonas Jodele
370 Altair Way, #42
Sunnyvale, CA 94086
(408) 245-1606

PETITIONER PRO SE

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

August 5, 1986

Julius Jonas Jodele, Petitioner-Appellant,	)
	) No. 85-7718
v.	)
	) MEMORANDUM*
Commissioner of Internal Revenue, Respondent-Appellee.	)

Petition to Review a Decision of the United States Tax Court

Submitted July 23, 1986**

Before: SNEED, ALARCON, and NOONAN, Cicuit Judges.

Julius Jonas Jodele appeals in pro se from the tax court's dismissal of his petition for redetermination of a tax deficiency for failure to state a claim. Jodele contends that the dismissal of his petition for failure to state a claim

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 21.

** The panel finds this case appropriate for submission wihtout oral argument pursuant to Fed. R. App. P. 34(a) and 9th Cir. R. 3(f).

denied him due process because he did not receive an oral hearing.

I.

A decision to dismiss for failure to state a claim upon which relief can be granted is reviewable de novo. Fidelity Financial Corp. v. Federal Home Loan Bank of San Francisco, No. 84-2634, slip op. at 6 (9th Cir. June 27, 1986). This court reviews decisions of the tax court on the same basis as it reviews decisions entered after civil bench trials in the district court. Mayors v. Commissioner, 785 F. 2d 757, 759 (9th Cir. 1986) (citing Commissioner v. Duberstein, 363 U.S. 278, 290-91 (1960).

II.

On August 12, 1985, the Commissioner filed a motion to dismiss Jodele's peti-

tion for redetermination of a tax deficiency for failure to state a claim. The Commissioner asserted that Jodele had not denied receipt of the wage amounts imputed to him or alleged justiciable facts as to to why those amounts do not constitute income. Tax Court Rule 34(b) (5). Instead, according to the Commissioner, Jodele made frivolous arguments which have been repeatedly denied by the courts. Jodele then moved to dismiss based on the Commissioner's lack of jurisdiction to consider the case.

On October 4, 1985, the tax court denied Jodele's motion, granted the Commissioner's motion to dismiss and awarded damages to the government of $5,000 under 26 U.S.C. § 6673 for frivolous petition.

III.

There is no constitutional right to oral

argument. Federal Communications Commission v. WJR, the Goodwill Station, Inc., 337 U.S. 265, 276 (1949). Rather, the right to an oral hearing is decided on a case by case basis. Id. "[T]he Constitution does not require oral argument in all cases where only insubstantial or frivolous questions of law, or indeed even substantial ones, are raised." Id.; see Dredge Corp. v. Penny, 338 F.2d 456, 462 n.14 (9th Cir. 1964) ("The opportunity to be heard orally on questions of law is not an inherent element of due process, even where substantial questions of law are involved.").

While it is true that Jodele did not receive an oral hearing, he had ample opportunity to present his arguments to the tax court on the questions of law raised by the Commissioner's motion to dismiss his petition for failure to state a cognizable

claim. Jodele availed himself of the right to petition the tax court for a redetermination, see 26 U.S.C. § 6213, and of the opportunity to oppose the Commissioner's motion to dismiss. He also filed his own notion to dismiss, with a supporting memorandum. Jodele was not denied due process simply because he did not receive an oral hearing.

IV.

The Commissioner requests sanctions on appeal. Sanctions are warranted in this matter.

This court has discretion to impose attorney fees and single or double costs as sanctions for bringing a frivolous appeal. Fed. R. App. P. 38; 28 U.S.C. § 1912; Olson v. United States, 760 F.2d 1003, 1005 (9th Cir. 1985); Nunley v. Commissioner, 758 F.2d 372, 373 (9th Cir. 1985.

An appeal is frivolous when the result is obvious or the argument on appeal wholly lack merit. DeWitt v. Western Pacific Rail, 719 F.2d 1448, 1451 (9th Cir. 1983). Here, Jodele was given ample opportunity to present his arguments to the tax court despite the fact that he did not receive an oral hearing. The result was obvious based on longstanding precedent. Jodele has not challenged the merits of the tax court's decision that his petition failed to state a claim upon which relief could be granted. The Commissioner requests that sanctions approximating the average costs and attorney's fees for this type of cas be awarded ($1,246). Sanctions in the amount of $1,000 are ordered imposed against the petitioner.

AFFIRMED.

UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

October 4, 1985

Julius Jonas Jodele, Petitioner,	)	
	)	Docket No.
v.	)	
	)	19185-85
Commissioner of Internal Revenue, Respondent.	)	

MEMORANDUM SUR ORDER

This case was assigned to Special Trial Judge D. Irvin Couvillion for consideration and ruling pursuant to the provisions of section 7456(c) and (d)[1] and Rule 180.[2] It is before the Court on respondent's motion to dismiss for failure to state a claim upon which relief can be granted, filed on August 12, 1985, pursuant to Rule 40. Also under consideration is a motion to dismiss for lack of jurisdiction filed

1 All section references are to the Internal Revenue Code of 1954, as amended, unless otherwise indicated.

2 All rule references are to the Tax Court Rules of Practice and Procedure.

by petitioner on September 3, 1985, seeks damages against petitioner under section 6673.

On March 26, 1985, respondent issued a notice of deficiency to petitioner in which respondent determined deficiencies in Federal income taxes and additions to tax as follows:

		Additions to Tax		
Year	Deficiency	Section 6653a(1)	Section 6653a(2)	Section 6654
1980	$6,458.68	$327.43	--	$397.50
1981	$6,462.00	$323.10	*	$495.15
1982	$8,050.00	$402.50	**	$783.74

* 50% of the interest due on $6,462.00.
** 50% of the interest due on $8,050.00.

The above determinations are based upon adjustments to petitioner's taxable income wherein respondent included in petitioner's income wages, taxable unemployment compensation benefits, and interest, items which had not been reported by petitioner.

The petition for redetermination of these proposed adjustments was filed on June 20, 1985. The petition recites petitioner's mailing address as 10717 Wolcott Place, Mission Hills, California 91345-2147. A motion for jury trial was filed by petitioner concurrently with his petition and this motion was denied July 2, 1985.

Reapondent's motion to dismiss is based upon the contention that the petition fails to allege facts upon which petitioner relies as his case as required by Rule 34(b)(4) and (b)(5).

Petitioner's motion to dismiss is based upon the contention that respondent has no jurisdiction to assess or to issue a notice of deficiency.

Addressing respondent's motion first, the Court finds that the petition does not

address itself to the proposed adjustments in the notice of deficiency. Petitioner's alleged errors and the facts to support such errors are legal conclusions such as, for example, that there is no definition of "income" in the Internal Refenue Code, that there is no requirement in the Internal Revenue Code that one must file a return, that filing a return is voluntary and petitioner has not volunteered to "self-assess himself," that petitioner has not been assessed by anything of known tangible value which qualifies as income since "income," as he alleges, is "gain" or "profit" and he had neither during the years in question.

The objections raised by petitioner have no merit. More importantly, petitioner has filed a petition which fails to state a case under the Rules of this Court.

Rule 34 (b) (4) requires a petitioner challenging a notice of deficiency to allege "clear and concise assignments of each and every error which petitioner alleges to have been committed by the Commissioner in the determination of the deficiency or liability." Rule 34 (b) (5) requires petitioner to allege "clear and concise lettered statements of the facts on which petitioner bases the assignments of error * * *."

We find that the general allegations of error by petitioner do not comport with the requirements of Rule 34(b)(5) and, therefore, no justiciable errors have been alleged with respect to respondent's determination of deficiency. Contrary to petitioner's assertions, taxpayers with taxable income are required by law to file Federal income Tax returns. Section 6012. Under section 6651 and 7203, taxpayer who

fail to file returns may be subject to civil additions to the tax and prosecution for criminal offenses. Therefore, the matter of filing tax returns and paying taxes is not voluntary as petitioner claims. Moreover, taxable income is not limited to the narrow definition of "gain" or "profit" as petitioner contends. Gross income means all income from whatever source derived including, but not limited to, wages. It includes income realized in any form, whether in money, property, or services. Section 61. Income as defined in the Sixteenth Amendment is "gain derived from capital, from labor, or from both combined." Eisner v. Macomber, 252 U.S. 189, 207 (1920). Income includes all realized accessions to wealth. Commissioner v. Glenshaw Glass Co., 348 U.S. 426 (1955). Finally, petitioner's claim that he was not previously assessed is without

merit. Under section 6213, respondent is expressly prohibited from making an assessment against a taxpayer while the delays for filing with this Court are pending and this prohibition continues until such time as a decision by this Court becomes final.

We conclude, therefore, that the errors alleged by petitioner are all legal conclusions which have long ago been resolved contrary to petitioner's contentions. The petition, therefore, fails to state a case.

Petitioner's motion to dismiss for lack of jurisdiction is based on the contention that respondent has no "jurisdiction" to assess him nor to issue a notice of deficiency. We agree with petitioner that respondent was without authority to assess him for the determined deficiency or additions to tax under section 6213. However,

respondent is authorized under the law to issue the notice of deficiency for the determined taxes and additions to tax. Section 6213. Petitioner's motion, therefore, is without merit. We find that respondent issued a valid notice of deficiency, a timely petition was filed with this Court and, therefore, the Tax Court has exclusive jurisdiction of this case. Sections 6212, 6213, 6214. The determinations made by respondent in the notice of deficiency are presumed correct; the burden of proof is on petitioner to show that the derterminations are wrong and the imposition of the burden of proof is constitutional. Welch v. Hevering, 290 U.S. 111 (1933); Rockwell v. Commissioner, 512 F.2d 882, 887 (9th Cir. 1975); Rule 142 (a).

We conclude, therefore, that the petition in the instant case does not comply with Rule 34(b)(4) and (5) and, according-

ly, respondent's motion to dismiss is granted. Petitioner's motion is denied.

Respondent, in his motion to dismiss, also requested the imposition of damages under section 6673.[3] As set forth in the statute, we may award damages where taxpayers bring frivolous and meritless issues or the proceedings are instituted primarily for delay. Grimes v. Commissioner, 82 T.C. 235, 239 (1984); Beard v. Commissioner, 82 T.C. 766, 781 (1984). See also Sydnes v. Commissioner, 74 T.C. 864, 870-873 (1980), affd. 647 F.2d 813 (8th Cir. 1981). Based on the petition

[3] SEC. 6673.

Whenever it appears to the Tax Court that proceedings before it have been instituted or maintained by the taxpayer primarily for delay or that the taxpayer's position in such proceedings is frivolous or groundless, damages in an amount not in excess of $5,000 shall be awarded to the United States by the Tax Court in its decision. Damages so awarded shall be assessed at the same time as the deficiency and shall be paid upon notice and demand from the Secretary and shall be collected as a part of the tax.

filed in this case, we conclude that petitioner's position is frivolous and completely without merit, and we further conclude that these proceedings were initiated and maintained by the petitioner primarily for delay. At no time has petitioner made a good faith attempt to contest the adjustments set forth in the notice of deficiency. Therefore, damages in the amount of $5,000 are hereby awarded to the United States pursuant to section 6673.

D. Irvin Couvillion
Special Trial Judge

Certificate of Service

It is hereby certified that service of a true and correct copy of the petition for writ of certiorari has been made on the Solicitor General by mailing a copy thereof on the 11th day of February, 1987, and a copy of this supplemental appendix on on the 25th of February, 1987, in an envelope, with 1st class postage prepaid, properly addressed to him as follows:

Solicitor General
Department of Justice
Washington, D.C. 20530

Julius Jonas Jodele

State of California
County of Santa Clara

Sworn and subscribed to me this 24t day of February, 1987, and before me personally appeared Julius Jonas Jodele to me well known and known to me to be the person who executed this document.

Michelle A. Carbajal
Notary Public

My Commission Expires:

OFFICIAL SEAL
MICHELLE A CARBAJAL
NOTARY PUBLIC - CALIFORNIA
SANTA CLARA COUNTY
My comm. expires JUN 1, 1990